

## **5-8.000**

# **THE APPELLATE SECTION**

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## **5-8.001**

### **Establishment**

The Appellate Section was created on July 12, 1937, by memorandum of that date signed by Assistant Attorney General Carl McFarland.

### **5-8.100 Area of Responsibility -- Generally**

The Appellate Section is responsible for all division cases on appeal which were handled by the Environmental Crimes Section, the Environmental Defense Section, the Environmental Enforcement Section, the General Litigation Section, the Indian Resources Section, the Land Acquisition Section and the Wildlife and Marine Resource Section in trial courts, including criminal prosecutions under the various environmental control and wildlife protection statutes. The responsibility for handling appeals of Division cases handled by United States Attorneys is determined pursuant to the provisions of USAM Title 2, Appeals.

### **5-8.200 Organization**

The Appellate Section is composed of a Chief, a Deputy Chief, two Assistant Chiefs, and those members of the professional, clerical, and stenographic staff specifically assigned to it. Seven senior attorneys are designated as counselors to, and reviewers of the work of the Section's attorneys.

### **5-8.300 Supervision and Handling of Appellate Cases -- Generally**

Except as provided for in USAM 5-8.320 staff attorneys in the Appellate Section handle all cases within the area of responsibility of that Section. The Chief of the Appellate Section is in charge of the assignment of all cases. Generally, the function of assigning cases is delegated to the Deputy Chief or an Assistant Chief. The reviewing attorney is specified at the time the case is assigned. Both the attorney assigned the case and the

reviewing attorney are then responsible for all aspects of the case. The primary attorney apprises the reviewing attorney of all developments.

### **5-8.320 Handling of Appeals by Other than Staff Attorneys**

The assignment of cases on appeal to attorneys in the Offices of United States Attorneys is determined pursuant to the provisions of USAM Title 2, APPEALS. At the conclusion of trial court proceedings, the report to the Division of the decision, either adverse or favorable to the government, in a case handled by the United States Attorney should indicate his/her preference, if any, for handling of the appeal; if the report does not indicate a preference, the Division will handle the appeal. *See* USAM Title 2, Appeals, 2-2.111, 2-2.000, 2-3.220. Where a United States Attorney handles the appeal, a section attorney and a reviewing attorney are assigned for assistance and necessary department coordination purposes. Because briefs must be coordinated with client agencies and interested agencies prior to filing, a draft must be provided to the section and reviewing attorneys at least ten days prior to filing.

In unusual circumstances, especially where time is of the essence (e.g., some applications for stays or injunctions pending appeal and for interlocutory appeals), arrangements for handling should be made by telephone with the Chief of the Appellate Section. *See* USAM Title 2, APPEALS.

### **5-8.500 General Procedures in Appellate Litigation**

Detailed instructions with respect to the handling of appeals are set forth in Title 2 of this Manual.

### **5-8.600 Settlement and Dismissal of Cases on Appeal**

Reference is made to the statement of the Division relative to settlement and dismissal of cases, (USAM 5-1.302 and 5-5.210 *et seq.*) and to the statements of the Division's trial litigation sections. *See* USAM 5-6.600, 5-7.600, 5-9.600, 5-10.600, 5-11.115, 5-12.600, 5-14.310 and 5-15.600.

### **5-8.620 Authorization for United States Attorneys to Handle Settlement and Dismissal of Appeals**

United States Attorneys are not authorized to settle or dismiss Environment and Natural Resources Division cases on appeal, without specific Division authority. A request for authorization to settle or dismiss division cases on appeal must be directed to the Chief of the Appellate Section, who transmits the request to the appropriate Division Trial Litigation section for action, if the matter is within that section's delegated authority. If the matter is beyond that section's delegated authority, that section forwards the request, with its own recommendation, to the Deputy Assistant Attorney General, who will act on the request or refer the matter to the Assistant Attorney General.

In a case where the Solicitor General has determined that no appeal will be prosecuted by the government and the appeal has not been docketed in the court of appeals, the Appellate Section requests the United States Attorney to dismiss the appeal in the district court. If the appeal has already been docketed in the court of appeals, the Appellate Section itself files a motion to dismiss the appeal in the court of appeals.

## **5-8.630 Settlements Requiring Approval of Solicitor General**

Special Attention is directed to 28 C.F.R. Sec. 0.163, Subpart Y, Chap. I:

### **Sec. 0.163 Approval by Solicitor General of action on compromise offers in certain cases.**

In any Supreme Court case the acceptance, recommendation of acceptance, or rejection, under Sec. 0.160 (Offers which may be accepted by Assistant Attorney General), Sec. 0.161 (Recommendations to Attorney General of acceptance of certain offers), is Sec. 0.162 (Offers which may be rejected by Assistant Attorney General), of a compromise offer by the Assistant Attorney General concerned, shall have the approval of the Solicitor General. In any case in which the Solicitor General has authorized an appeal to any other court, a compromise offer, or any other action, which would terminate the appeal, shall be accepted or acted upon by the Assistant Attorney General concerned only upon advice from the Solicitor General that the principles of law involved do not require appellate review in that case.